

CALIFORNIA COASTAL COMMISSION

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Staff Report: Appeal Substantial Issue Determination

Application numberA-3-MCO-03-090, Ryter

Applicant.....Stephen L. Ryter c/o Snow Consulting

AppellantsCommissioners Reilly and Wan

Project location.....30990 Aurora Del Mar, Otter Cove area, Big Sur Coast (Monterey County) (APN 243-241-014).

Project description.....Construct a split-level residence (6,000 sq. ft. total including the attached three-car garage; estimated footprint over 4,000 sq. ft.); also, 1,800 sq. ft. of patio area, a septic system, and grading (1,050 cubic yards cut/300 cubic yards fill), on a vacant 2.7 acre parcel; and reduce the minimum coastal bluff edge set back from 50 feet to 30 feet.

Local approval.....The Monterey County Planning Commission approved a Combined Development Permit, Resolution 03040 (PLN020444), for the project on August 6, 2003.

File documents.....Monterey County certified Local Coastal Program; Final Local Action Notice 3-MCO-03-337; documents and materials from the local record provided by Monterey County on July 22, 2003; Big Sur Coast Land Use Plan.

Staff recommendation ...Substantial Issue

I. Recommended Findings and Declarations for Substantial Issue:

Monterey County approved a Coastal Development Permit for the construction of a 6,000 square foot, two-story residence with associated grading and paving, between Highway 1 and the sea at the northern end of the Big Sur Coast area (project location and plans attached as Exhibit 1). The project has been appealed to the Coastal Commission on the basis that it is inconsistent with a substantial number of different policies and implementing ordinances of the Monterey County Local Coastal Program (LCP), as well as the Coastal Act's public access policies. The submitted reasons for appeal are attached to this report as Exhibit 2.

Staff recommends that the Commission determine that the appeal raises a **substantial issue** regarding the project's conformance to the Monterey County certified LCP, including the Big Sur Coast Land Use Plan (LUP) and Coastal Implementation Plan (CIP), and the applicable Coastal Act public access policies.



**California Coastal Commission
October 10, 2003 Meeting in Coronado**

Staff: L. Otter Approved by:

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In particular, the following LCP conflicts and issues are highlighted as raising a substantial issue:

- 1) **Scenic views.** The Big Sur Coast LUP visual resource Key Policy section 3.2.1 generally prohibits new development visible from Highway 1. However, special standards have been adopted for the Otter Cove area that allow residential use on existing lots *if* measures are incorporated to insure that visual impacts are *minimized* and do not block ocean vistas as seen from Highway 1 (LUP 3.2.5.G). Modifications for siting, design, size and access are required where needed to insure that new development be designed to blend in with, and be subordinate to, the natural environment (LUP 3.2.4.A.3). Building sites are required to be selected so as to avoid the construction of visible access roads (LUP 3.2.4.A.5). Dedication of a scenic easement over the undeveloped portion of the lot is required (LUP 3.2.5.G, and CIP Section 20.145.030.B.7.e).

The project's size and visually prominent location conflict with the LCP's visual resource protection policies. As designed and located, bluewater views as seen from Highway 1 will be directly blocked. The proposed structure is far too large to blend in with, and be subordinate to the natural environment. Also, the associated paved surfaces, including a long entrance drive in a highly visible location and extensive patio areas, are excessive. Therefore, the project clearly is *not* consistent with the LCP standard.

The County applied 20 conditions of approval, but these will not result in the modifications needed to conform with LUP policies. (County Findings and Conditions of Approval attached as Exhibit 3.) Although there is no separate condition to require the dedication of a scenic easement, through reference to the project's "Mitigation Monitoring and/or Reporting Plan" the County did require a scenic easement on part of the lot. But, paradoxically, it only covers the *least* visible portions of the lot and will not preclude future expansion of the proposed residence. Therefore, the County's action is not consistent with the LUP requirement to dedicate a scenic easement over the unbuilt portions of the lot. Accordingly, a substantial issue of LCP conformance is raised.

Alternatives are available for minimizing impacts on Highway 1 views, including a substantial reduction in size, and alternative siting on the lot. For example, an alternative residence design of perhaps 2000 square feet, only one story in height, with no additional entry drive required, appears feasible if the septic system is completely reconfigured and downsized proportionately. A location on the north side of the arroyo would also serve to better cluster the new home with the existing homes in the Otter Cove Subdivision, thereby reducing visual impacts on the view from Highway 1 to the sea. A side yard setback variance may be appropriate for better achieving this goal.

The presence of larger houses (including applicant's previously-approved house) on nearby lots does not confer any inherent right for another large-scale residence on this highly visible parcel.



- 2) **Hazard avoidance.** The LCP's Big Sur Coast policies require that blufftop setbacks "shall be adequate to avoid the need for seawalls during the development's economic lifespan." (LUP 3.9.1.1). Also, the development must not create a geologic hazard or diminish the stability of the area (LUP 3.7.3.A.9).

Geologic and geotechnical investigations have been prepared for this site. These reports confirm that the site comprises a layer of coastal terrace alluvium perched on granite bedrock, and that the rate of shoreline retreat has been historically modest. However, unanticipated events can and will occur. For example, applicant's similarly-situated house on the adjacent lot was sited too close to the seaward edge of the coastal bluff, and after the 1998 El Niño season had to be retrofitted with a seawall after the project was built. Also, as experience has shown, a project's septic, drainage, and irrigation systems can saturate the bluff and diminish the stability of the site.

One way to reduce the risk of such failure is to maximize the distance from the bluff edge. However, instead of maximizing the setback distance, the County allowed a reduction of the required minimum coastal bluff edge setback from 50 feet to 30 feet.

Total impervious surface coverage, including roof areas, paving, stone patios and walls was cited as 12,470 sq. ft. But, the County's approval did not require applicant to reduce this excessive area of impervious surface as a means of reducing saturation, runoff and erosion impacts (i.e., through reduced roof, driveway and patio coverage). And, only partial measures are provided to address the effects of saturation by landscape irrigation. Although the building site on the north side of the arroyo appears in many respects to better meet LCP requirements, detailed geologic and geotechnical analysis focuses only on applicant's preferred site on the south side of the arroyo, at the seaward margin of the coastal terrace. Accordingly, the provided information can not be considered complete enough to conform with LCP standards, nor does it provide the County with the necessary data to evaluate alternative project sizing, design and siting. A substantial issue of LCP conformance is raised accordingly.

3) **Public access.** Coastal Act section 30212 (a) provides: "Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects..." The LCP's public access key policy for the Big Sur Coast (LUP 6.1.3) states: "The rights of access to the shoreline, public lands, and along the coast, and opportunities for public hiking access, shall be protected, encouraged and enhanced." Opportunities for blufftop and lateral access are required to be protected for long-term public use (LUP 6.1.4.5). And, dedication of public access easements or offers thereof are required "...for all locations fronting the shoreline as a condition of new development..." (LUP 6.1.5.B.2)

The proposed development is located between the first public road and the sea; and, an existing recorded easement provides State Park administrative access rights along an abandoned segment of the old Coast Road across applicant's properties, seaward of the



modern Highway 1 alignment. (See Exhibit 4, attached.) The southern segment of this recorded easement spans the distance between a long Highway 1 pullout (east of the Otter Cove Subdivision) and the northern limit of the Garrapata State Park shoreline, crossing applicant's intervening parcels. This potential blufftop public access alignment is shown on the Trails Plan (Figure 3) in the Big Sur Coast LUP. While not presently maintained or signed for public use, the existing easement in favor of the downcoast landowner (State Parks) could be modified to clearly allow such use; and, is highly suitable for both a California Coastal Trail link and access to nearby blufftop overlooks within the State Park.

Further utilization of the abandoned public roadbed for private residential purposes will tend to prejudice future efforts to secure public hiking rights in at least part of the existing State Parks easement. Conversion to paved residential driveway, fencing, gates and signs accessory to residential development will further discourage public use.

To the extent that residential development of this vacant parcel would impair public access opportunities, recordation of an offer to broaden the terms of the existing easement to general pedestrian use would appropriately mitigate any such impact. However, the County's approval lacks the required offer of dedication. Nor, does it require that the existing easement be broadened to clearly allow public hiking use. Without such public access provision, or its functional equivalent, the project raises a substantial issue of conformance with the applicable Coastal Act and LCP public access policies.

4) Environmentally sensitive habitat areas. The project's Biological Assessment report notes the presence of a plant species—Dune buckwheat—that is an indicator for environmentally sensitive habitat. Coastal scrub, coastal prairie, and the marine and rocky near-shore habitats found on the parcel are environmentally sensitive as well.

The LCP gives high priority to the protection of the Big Sur Coast's environmentally sensitive habitat areas. For example, new development must be sited and designed to avoid disturbance of coastal grasslands (LUP 3.3.3.A.7). Siting and design of development on parcels adjacent to intertidal habitat areas is subject to LUP Policy 3.3.3.B.1, regarding septic system percolation and sedimentation impacts. And, LUP Policy 3.3.2.3 states: "The County shall require deed restrictions or dedications of permanent conservation easements in environmentally sensitive habitats when new development is proposed on parcels containing such habitats."

The project will remove coastal scrub and coastal prairie habitat—and, has the potential to disrupt sensitive marine habitats adjacent to the site. As noted above, the impervious surface area of the development is shown as exceeding 12,000 sq. ft.; and, conditions for operation of the septic system, very near the bluff edge over a granitic formation, are not ideal. Viewed from the sea, seepages and "springs" are evident in the bluff face, downslope from residential septic systems. Available mitigation measures include a



substantial reduction in site coverage, proportional reduction of septic system size, use of a pumped sewage system to relocate the septic system farther away from the bluff edge, and/or resiting the residence to a location at the parcel's northern boundary that would better cluster development adjacent to the existing Otter Cove Subdivision.

The County did not require any of these design modification measures to protect the natural habitats on and adjacent to the site. The coastal permit conditions did not directly include protection of the undeveloped portion of the property within a conservation easement, nor in a deed restriction enforceable by the County. However, through reference to the project's "Mitigation Monitoring and/or Reporting Plan" the County did require a scenic easement on part of the lot. But, the LUP requirement is not met because only a part of the undeveloped lot area is included. Therefore, the proposed development raises the issue of conformance with LCP Environmentally Sensitive Habitat Area protection policies.

5) Water quality protection. As cited above, the location and design of development on parcels adjacent to intertidal habitat areas is subject to LUP Policy 3.3.3.B.1. The purpose of this policy is to avoid septic system percolation and sedimentation impacts. The proposed building site is on shallow coastal terrace colluvium over granite bedrock. Storm water runoff and septic system leachates from the development have the potential to adversely impact adjoining tidepools and rocky intertidal habitats that are part of the Monterey Bay National Marine Sanctuary.

Alternative sites and designs that would reduce the potential for sediments and septic system leachates were not pursued. A substantial issue of conformance with the LCP's water quality protection policies is raised accordingly.

Additional information: In addition to the LCP and Coastal Act inconsistencies highlighted above, the appeal also cites County staff testimony concerning applicant's offer to conserve this site as open space (pursuant to previous development approved on the adjacent parcel). The question is relevant because the project conflicts with the terms under which Monterey County and the Coastal Commission (by not taking appeal jurisdiction over the project) approved development of the adjacent parcel.

In particular, a County Staff Member, speaking at the Commission hearing on the appeal of this earlier project (A-3-MCO-94-09) in April of 1994, represented to the Commission that the site would never be developed because "*the Ryters are dedicating one of the parcels in open space for free.*" (Testimony of Paul Tran, County Planner, Official Transcript of Commission Hearing, April 12, 1994, page 28, lines 13- 15). The Commission thus understood that this parcel would not be developed and went on to find that the county approval of a residence on the applicant's neighboring parcel raised no substantial issue.



Applicant's attorney, in correspondence dated June 26, 2003 confirms this offer, along with an explanation: "The Ryters had previously expressed the intention of leaving [this] lot as open space, but due to economic impacts of the extraordinary cost of developing their existing home, including three years of litigation, Coastal Commission appeals and an arson fire...this is no longer an option." Nonetheless, as noted in the Reasons for Appeal, if the parcel "...should be in open space based on this earlier project approval, then clearly any new construction on the site would be inappropriate."

II. Recommended Motion and Resolution

MOTION:

*I move that the Commission determine that Appeal No. A-3-MCO-03-090 raises **NO** substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION:

Staff recommends a **NO** vote. Failure of this motion will result in a *de novo* hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-3-MCO-03-090 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

III. Appeal Procedures:

Coastal Act Section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable to the Coastal Commission because it is located between the first public road and the sea; and, because it is within 30 feet from the edge of the coastal bluff.



The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified LCP or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a *de novo* coastal development permit hearing on an appealed project unless a majority of the Commission finds that “no substantial issue” is raised by such allegations. Under Section 30604(b), if the Commission conducts a *de novo* hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project is located between the first public road and the sea and thus, this additional finding would need to be made in a *de novo* review in this case.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the *de novo* stage of an appeal.

